PPAI 2200: The Political Economy of Punishment [Professor Glenn C. Loury]
Writing Assignment #2

Here are four comments for you to consider from various sources on the death penalty:
**1. Findings of *Equal Justice and the Death Penalty: A Legal and Empirical Analysis*:**
"A statistical study performed by Prof. David C. Baldus and colleagues of more than two
thousand Georgia murder cases during the 1970s demonstrated disparities in the imposition of the
death sentence based primarily on the race of the murder victim. The study found that the death
sentence was imposed in 22 percent of the cases involving black defendants and white victims, 8
percent of the cases involving white defendants and white victims, 1 percent of the cases
involving black defendants and black victims, and 3 percent of the cases involving white
defendants and black victims.  Even after accounting for thirty-nine nonracial variables, the study
found that defendants charged with killing white victims were 4.3 times a likely to receive a death
sentence as defendants charged with killing blacks." (from R. Kennedy, *Race, Crime and the
Law*)
**2. Sup. Ct. says these findings are irrelevant** (*McCleskey v. Kemp* 481 U.S. 279, 1987):
The U.S. Supreme Court voted five to four to uphold McCleskey's death sentence. The Court's
majority opinion stated: "At most, the Baldus study indicates a discrepancy that appears to
correlate with race.  Apparent disparities in sentencing are an inevitable part of our criminal
justice system.  Where the discretion that is fundamental to our criminal process is involved, we
decline to assume that what is unexplained is invidious… (W)e hold that the Baldus study does
not demonstrate a constitutionally significant risk of racial bias affecting the Georgia capital
sentencing process."
**3. Review of Benjamin Fluery-Steiner's book, *Jurors' Stories of Death*** concludes: "Opponents
of the death penalty will find more fuel for the fire in this study of jurors who have voted to
sentence someone to death. As civil rights expert David Cole puts it in his foreword, the book
opens up the 'black box' of jury deliberations and reveals that decisions on whether or not to
administer the death penalty are influenced by "jurors' attitudes—conscious or unconscious—
about race and class." Fleury-Steiner … reveal(s) thinking that the author sees as paternalistic,
simplistic or as reinforcing the juror's sense of white superiority... This "us" vs. "them" mentality
on the part of jurors, says Fleury-Steiner, is evidence that the death penalty is administered
unfairly and should be abolished." **But, Justice Scalia disagreed:** "*The unconscious operation of
irrational sympathies and antipathies including racial, upon jury decisions and (hence)
prosecutorial decisions is real, acknowledged in the decisions of this court, and ineradicable.*"
(from Justice Scalia's opinion in *McClesky*)
**4. Some Key questions** (taken from R. Kennedy, *Race, Crime and the Law*, Chp. 10):
  *a. If a jurisdiction tends to punish more harshly murderers of whites than murders of blacks, is
the appropriate response to abolish capital punishment, to more narrowly limit the circumstances
in which capital punishment is imposed, or to execute more people who murder blacks?*
  *b. Even if such a tendency exists, wouldn't a convicted murderer need to show that racial
discrimination affected the punishment meted out in his particular case?*
  *c. Is such a tendency a remediable wrong or instead an unavoidable social trait whereby people
identify more with the victimization of "their own" as opposed to the victimization of "others"?*
  *d. If this tendency is a wrong, is remedying it within the capacity of courts or is remedying this
wrong best left to the legislative and executive branches of government?*

**YOUR ASSIGNMENT, BASED ON YOUR READING OF KENNEDY'S CHAPTER 10,
FLUERY-STEINER'S BOOK AND ANY OTHER SOURCES YOU DEEM RELEVANT,
IS TO WRITE 3-4 DOUBLE-SPACED PAGES IN WHICH YOU TAKE-ON ONE OF
THE QUESTIONS RAISED ABOVE, ADDRESSING IT AT LENGTH.**
(This assignment is due Tuesday, October 21 at the start of class**.**)